

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds as follows:

When claimant was going to work on January 30, 1995, she fell and injured herself while walking on a sidewalk outside respondent's plant. Because claimant was on her way to assume the duties of her employment, the "going and coming" rule contained in K.S.A. 44-508(f) is applicable. The statute provides:

*"The words 'arising out of and in the course of employment' as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer." . . . (Emphasis ours.)*

Although the record is somewhat confusing and photographs would have been helpful, the Appeals Board finds claimant was on respondent's premises when she fell and, therefore, claimant's accident arose out of and in the course of her employment. The Preliminary Hearing Order of the Administrative Law Judge should be affirmed. Claimant's testimony, coupled with the exhibit depicting the location of the sidewalk relative to respondent's plant, indicates the sidewalk was immediately outside respondent's plant and led solely to the entrance to the plant. From the evidence presented, it appears the sidewalk is part of respondent's premises and under the exclusive care and control of respondent.

Although the parties advised the Administrative Law Judge they would obtain photographs of the plant and sidewalk and stipulate to their entry into the evidentiary record, the parties' briefs do not mention their existence and none are found in the Court's file.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl dated April 18, 1995, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1995.

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BOARD MEMBER

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- c:     Joseph Seiwert, Wichita, Kansas  
       Vincent A. Burnett, Wichita, Kansas  
       Shannon S. Krysl, Administrative Law Judge  
       David A. Shufelt, Acting Director